

AMENDED IN SENATE APRIL 16, 2013

SENATE BILL

No. 735

**Introduced by Senator Wolk
(Coauthor: Senator DeSaulnier)**

February 22, 2013

An act to amend Section 85057.5 of the Water Code, relating to the Sacramento-San Joaquin Delta Reform Act of 2009.

LEGISLATIVE COUNSEL'S DIGEST

SB 735, as amended, Wolk. Sacramento-San Joaquin Delta Reform Act of 2009: covered actions.

The Sacramento-San Joaquin Delta Reform Act of 2009 establishes the Delta Stewardship Council, which is required to develop, adopt, and commence implementation of a comprehensive management plan for the Delta by January 1, 2012. The act requires a state or local public agency that proposes to undertake a covered action to prepare a written certification, as prescribed, as to whether the covered action is consistent with the Delta Plan. The act defines "covered action" to mean a plan, program, or project that meets specified conditions.

This bill would exclude from the definition of "covered action" the approval or implementation of a ~~project which is a part of a larger conservation plan and implementing agreements submitted, by specified entities, pursuant to the federal Endangered Species Act, a natural community conservation plan submitted pursuant to the Natural Community Conservation Planning Act, or certain permits provisions related to the taking, importation, exportation, or sale of endangered or threatened species issued to specified entities located within certain counties, or the implementation of conservation measures included in~~

a conservation plan approved, by specified entities, pursuant to these provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 85057.5 of the Water Code is amended
2 to read:
3 85057.5. (a) “Covered action” means a plan, program, or
4 project as defined pursuant to Section 21065 of the Public
5 Resources Code that meets all of the following conditions:
6 (1) Will occur, in whole or in part, within the boundaries of the
7 Delta or Suisun Marsh.
8 (2) Will be carried out, approved, or funded by the state or a
9 local public agency.
10 (3) Is covered by one or more provisions of the Delta Plan.
11 (4) Will have a significant impact on achievement of one or
12 both of the coequal goals or the implementation of
13 government-sponsored flood control programs to reduce risks to
14 people, property, and state interests in the Delta.
15 (b) “Covered action” does not include any of the following:
16 (1) A regulatory action of a state agency.
17 (2) Routine maintenance and operation of the State Water
18 Project or the federal Central Valley Project.
19 (3) Regional transportation plans prepared pursuant to Section
20 65080 of the Government Code.
21 (4) A plan, program, project, or activity within the secondary
22 zone of the Delta that the applicable metropolitan planning
23 organization pursuant to Section 65080 of the Government Code
24 has determined is consistent with either a sustainable communities
25 strategy or an alternative planning strategy that the State Air
26 Resources Board has determined would, if implemented, achieve
27 the greenhouse gas emission reduction targets established by that
28 board pursuant to subparagraph (A) of paragraph (2) of subdivision
29 (b) of Section 65080 of the Government Code. For purposes of
30 this paragraph, “consistent with” means consistent with the use
31 designation, density, building intensity, transportation plan, and
32 applicable policies specified for the area in the sustainable
33 communities strategy or the alternative planning strategy, as

1 applicable, and any infrastructure necessary to support the plan,
2 program, project, or activity.

3 (5) Routine maintenance and operation of a facility located, in
4 whole or in part, in the Delta, that is owned or operated by a local
5 public agency.

6 (6) A plan, program, project, or activity that occurs, in whole
7 or in part, in the Delta, if both of the following conditions are met:

8 (A) The plan, program, project, or activity is undertaken by a
9 local public agency that is located, in whole or in part, in the Delta.

10 (B) Either a notice of determination is filed, pursuant to Section
11 21152 of the Public Resources Code, for the plan, program, project,
12 or activity by, or the plan, program, project, or activity is fully
13 permitted by, September 30, 2009.

14 (7) (A) A project within the secondary zone, as defined pursuant
15 to Section 29731 of the Public Resources Code as of January 1,
16 2009, for which a notice of approval or determination pursuant to
17 Section 21152 of the Public Resources Code has been filed before
18 the date on which the Delta Plan becomes effective.

19 (B) A project for which a notice of approval or determination
20 is filed on or after the date on which the final Bay Delta
21 Conservation Plan becomes effective, and before the date on which
22 the Delta Plan becomes effective, is not a covered action but shall
23 be consistent with the Bay Delta Conservation Plan.

24 (C) Subparagraphs (A) and (B) do not apply to either of the
25 following:

26 (i) A project that is within a Restoration Opportunity Area as
27 shown in Figure 3.1 of Chapter 3: Draft Conservation Strategy of
28 the Bay Delta Conservation Plan, August 3, 2009, or as shown in
29 a final Bay Delta Conservation Plan.

30 (ii) A project that is within the alignment of a conveyance
31 facility as shown in Figures 1 to 5, inclusive, of the Final Draft
32 Initial Assessment of Dual Delta Water Conveyance Report, April
33 23, 2008, and in future revisions of this document by the
34 department.

35 (8) Leases approved by a special district if all of the following
36 apply:

37 (A) The uses proposed by the lease are authorized by the
38 applicable general plan and zoning ordinances of the city where
39 the special district is located.

1 (B) The uses proposed by the lease are approved by the city
2 where the special district is located and the city complies with
3 Chapter 3 (commencing with Section 85225) of Part 3, if
4 applicable, prior to approval of the lease by the special district.

5 (C) The special district complies with the California
6 Environmental Quality Act (Division 13 (commencing with Section
7 21000) of the Public Resources Code) prior to approving the lease.

8 (9) (A) Routine dredging activities that are necessary for
9 maintenance of facilities operated by a special district.

10 (B) For purposes of this paragraph, “routine dredging activities”
11 are limited to the following:

12 (i) Dredging to maintain the Stockton Deep Water Ship Channel
13 at a depth of 40 feet in the sediment trap at the confluence of the
14 San Joaquin River, between river mile 39.3 to river mile 40.2, and
15 to maintain the remaining Stockton Deep Water Ship Channel at
16 a depth of 35 feet plus 2 feet overdredge from river mile 35 to river
17 mile 43.

18 (ii) Dredging designed to maintain the Sacramento Deep Water
19 Ship Channel at a depth of 30 feet plus 2 feet of overdredge from
20 river mile 0.0 to river mile 30, and at a depth of 35 feet from river
21 mile 35 to river mile 43.

22 (C) Except as provided by this subdivision, it is the intent of
23 the Legislature that this exemption shall not be interpreted or
24 treated as changing or modifying current substantive and procedural
25 regulations applicable to the decision to approve dredging
26 operations.

27 ~~(10) The approval or implementation of (a) a project that is a~~
28 ~~part of a larger conservation plan submitted pursuant to Section~~
29 ~~1539 of the federal Endangered Species Act (16 U.S.C. Sec. 1531~~
30 ~~et seq.), (b) a natural community conservation plan submitted~~
31 ~~pursuant to the Natural Community Conservation Planning Act~~
32 ~~(Chapter 10 (commencing with Section 2800) of Division 3 of the~~
33 ~~Fish and Game Code), or (c) a permit issued pursuant to Section~~
34 ~~2081 of the Fish and Game Code that is issued to a city, county,~~
35 ~~special district, or Joint Powers Authority consisting of cities or~~
36 ~~counties, or both, within the Counties of Contra Costa, Sacramento,~~
37 ~~San Joaquin, Solano, or Yolo.~~

38 *(10) The approval of a conservation plan and implementing*
39 *agreements submitted by a city, county, special district, or joint*
40 *powers authority consisting of cities or counties, or both, within*

1 *the Counties of Contra Costa, Sacramento, San Joaquin, Solano,*
2 *or Yolo pursuant to any of the following:*

3 (A) *Section 1539 of the federal Endangered Species Act (16*
4 *U.S.C. Sec. 1531 et seq.).*

5 (B) *The Natural Community Conservation Planning Act*
6 *(Chapter 10 (commencing with Section 2800) of Division 3 of the*
7 *Fish and Game Code).*

8 (C) *Section 2081 of the Fish and Game Code for a conservation*
9 *plan and implementing agreements that are also incorporated in*
10 *a conservation plan pursuant to Section 1539 of the federal*
11 *Endangered Species Act (16 U.S.C. Sec. 1531 et seq.).*

12 (11) *The implementation of conservation measures included in*
13 *a conservation plan approved by a city, county, special district,*
14 *or joint powers authority consisting of cities or counties, or both,*
15 *within the Counties of Contra Costa, Sacramento, San Joaquin,*
16 *Solano, or Yolo pursuant to any of the following:*

17 (A) *Section 1539 of the federal Endangered Species Act (16*
18 *U.S.C. Sec. 1531 et seq.).*

19 (B) *The Natural Community Conservation Planning Act*
20 *(Chapter 10 (commencing with Section 2800) of Division 3 of the*
21 *Fish and Game Code).*

22 (C) *Section 2081 of the Fish and Game Code for a conservation*
23 *plan and implementing agreements that are also incorporated in*
24 *a conservation plan pursuant to Section 1539 of the federal*
25 *Endangered Species Act (16 U.S.C. Sec. 1531 et seq.).*

26 (c) For purposes of ~~this section~~ *paragraphs (8) and (9) of*
27 *subdivision (b), “special district” means the Port of Stockton or*
28 *the Port of West Sacramento.*

29 (d) This section shall not be interpreted to authorize the
30 abrogation of a vested right whether created by statute or by
31 common law.